

PUBLIC LAW BOARD NUMBER 3530

Award Number: 64
Case Number: 64

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

B & B Foreman, A. T. Morton, Rt. 1, Box 95, Freeman, VA 23856 was given a 60 day suspension for alleged responsibility of collision of Extra 542 West and Maintenance of Way equipment. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request pay for the 60 days with vacation, seniority and all other rights unimpaired.

FINDINGS

Claimant was employed as a B and B Foreman with Carrier. On November 28, 1984, Claimant was notified of his removal from service pending investigation on the basis of his responsibility for a collision occurring on November 27, 1984. Claimant was notified of his removal from service pending investigation on the basis of his responsibility for a collision occurring on November 27, 1984. An investigation was held on December 17, 1984. By letter dated January 4, 1985, Claimant was given a 60 day suspension.

The issue to be decided in this dispute is whether Claimant was disciplined for just cause under the Agreement.

The position of the Organization is that Carrier acted arbitrarily and without basis in assessing the suspension against Claimant, contending that the evidence produced at the investigation established that Claimant was not primarily at fault for the collision in question. The Organization cites Claimant's testimony that Foreman Lester was responsible for ensuring that machines other than the crane were cleared from the track. The Organization maintains that Claimant fulfilled his responsibilities regarding the crane he was operating and that Lester's failure to handle the machines under his supervision was the main cause of the accident.

The position of the Carrier is that Claimant was properly disciplined along with other employees for operating in a negligent manner.

Initially, Carrier contends that there is no question concerning Claimant's responsibility for the accident. Carrier cites Claimant's own testimony that he notified the train crew that the track was clear. Carrier further cites Claimant's testimony that he never received confirmation that the track was clear or that the switch was closed. Carrier argues that Claimant's testimony as a whole established that he negligently allowed the train to proceed without ensuring that conditions were safe, thereby resulting in the accident. Carrier maintains

that the accident caused extensive damage to its equipment and placed several employees in physical jeopardy.

Finally, Carrier maintains that Lester's responsibility for the collision in question in no way mitigates Claimant's responsibility. Carrier argues that Claimant's negligence in failing to ensure safe conditions for the train was based on his failure to personally confirm track clearance and proper switching. Carrier therefore argues that Lester's responsibility has no bearing on Claimant's negligence and therefore no bearing on the discipline imposed against Claimant.

After review of the record, the Board finds that the claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

In the present case, we find that Carrier has sustained the charge against Claimant through substantial evidence. Claimant's testimony indicates clearly that he informed the train crew that the track was clear on the mere assumption that such was the case. Claimant failed to ensure, as was his responsibility, that the track in fact was clear (which it was not) and was therefore at least partially responsible for the accident. The fact that

other employees were additionally responsible for the accident in no way minimizes Claimant's responsibility, particularly since it was his direct action that precipitated the circumstances leading to the accident. In light of Claimant's negligent actions and the serious consequences resulting from those actions, we find that Carrier acted within its discretion in assessing the discipline imposed against Claimant.

AWARD

Claim denied.

Nicholas P. Harris
Neutral Member
J. C. Lyons
Carrier Member
Bruce L. Hall
Organization Member

DATE: 1-29-88